

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
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Application for a Certificate of Public Convenience and	:	
Necessity, pursuant to Section 8-406.1 of the Illinois	:	No. 13-0657
Public Utilities Act, and an Order pursuant to Section	:	
8-503 of Illinois Public Utilities Act, to Construct,	:	
Operate and Maintain a new 345 kilovolt transmission	:	
line in Ogle, DeKalb, Kane and DuPage Counties, Illinois	:	

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Commonwealth Edison Company (“ComEd”) submits its Reply Brief on Reopening under the Illinois Commerce Commission’s (the “Commission” or “ICC”) Rules of Practice, the Commission’s July 9, 2014 Order, and the rulings of the Administrative Law Judges (“ALJs”).

I. INTRODUCTION

The initial briefs on reopening (“IBoR”) demonstrate how narrow the remaining issues are. The previously demonstrated need for the Grand Prairie Gateway (“GPG”) Project (the “Project”), the substantial customer benefits it will deliver, and ComEd’s proven ability to efficiently finance, construct, and operate the Project are all unchallenged, as is the vast majority of the route. The notice concern that drove the reopening is also resolved: all identifiable private owners of land on or adjacent to any route supported by any ComEd or any intervenor testimony were sent individual written notice at least 150 days before the Commission’s scheduled decision. *See* ComEd IBoR at 2. No matter how the notice requirements are interpreted, no notice issue remains.

The only dispute on reopening is over proposals adopt the “Kenyon/Deutsch Adjustment” or the “Dauphinais Adjustments” to the route proposed by ComEd. These alternatives are

opposed not only by ComEd, but by most of the parties who appeared after receiving individual notice of these proposals. Only the briefs on reopening of the SKP/URMC parties (collectively “SKP”) support the Dauphinais Adjustments and only the SKP and Smith briefs support the Kenyon/Deutsch Adjustment. The 11 Burlington Group intervenors devote their entire brief to opposing Dauphinais Adjustment #2, and other intervenors also oppose the Dauphinais proposals. *See* Burlington Group IBoR at 1-4; Burlington Group Pet. to Intervene at 1 (“The Petitioners object to a proposed alternative route for the Project known as ‘Dauphinais Adjustment 2.’”); *see also* Schramm IBoR at 1-2; Deutsch RB at 4-6. As this brief explains, all of these adjustments are inferior to the Primary Route, and the Kenyon/Deutsch Adjustment cannot even be acquired.

SKP also inaccurately claims that ComEd is attempting to use the unique quality of its routing study to shut out alternatives, regardless of their merit. To the contrary, ComEd carefully considered alternatives before and during this proceeding, and has continued to consider and accept input even during this proceeding. But, the record does prove that ComEd (and Staff, in reviewing ComEd’s study) evaluated the route holistically, realistically, and appropriately based on objective data and public input, and that fact is one more reason ComEd’s recommendations should be accepted on their merits.

II. THE SKP ROUTING ALTERNATIVES DISREGARD THE RESULTS OF THE PUBLIC ROUTE EVALUATION PROCESS

SKP claims that ComEd is trying to use its study to foreclose or “trump” alternatives. SKP IBoR at 4-9. SKP mischaracterizes ComEd’s position. ComEd has never suggested that “any landowner proposing adjustments must undertake their own ‘robust public process.’” *Id.* at 4. Nor has ComEd claimed that the Commission should reject or discount a “landowner

generated” route even where it is a “categorically superior routing based upon the twelve factors utilized by the Commission[.]” *Id.* at 5.

ComEd has, however, accurately pointed out that its routing study relied on both a wealth of detailed objective data and on broad public input in applying the Commission-approved routing factors. Murphy Dir., ComEd Ex. 5.0, 4:82 – 9:174. ComEd’s study began with

more than 50 categories of data – including existing infrastructure and electric transmission facilities, jurisdictional boundaries, property boundaries, existing and future land use and zoning features, and environmental (ecological, hydrological, topographical, geological, soils, archaeological and historic, etc.) features ... acquired from more than 50 sources[.]

Id. at 5:96-101. The extensive public participation and outreach process, as well as personal evaluations “on the ground,” guided how ComEd and ERM, its expert environmental and siting consultant, identified route opportunities and sensitivities. *See, e.g., id.* at 16:308 – 17:314; Murphy, Tr. at 443:12 – 444:9; *see also* ComEd Ex. 5.04 (detailing 48 opportunities and sensitivities). The record also shows that ComEd balanced those Commission-approved factors using a “holistic approach,” again informed by what it learned during its outreach process. Murphy, Tr. at 443:21 – 444:6; Murphy Dir., ComEd Ex. 5.0, 17:316-21. SKP’s argument that ComEd would force intervenors to run a separate public process is untrue, and ComEd has never argued for such a view. ComEd has instead pointed out that nothing precluded SKP from using not just the same raw data, but also taking advantage of the information ComEd collected through this public process about how the competing factors should be considered. But, SKP’s route selection process had, instead, a different purpose. Indeed, Mr. Dauphinais did not even personally inspect the area. Dauphinais, Tr. 218:9-18.

The purpose of ComEd’s route study is clear. ComEd witness Ms. Murphy was assigned to find the best route for the line that balanced the routing factors, which makes sense given that ComEd’s goal is to build the Project efficiently, on a viable, least-cost route. Like Staff witness

Rashid, who independently concluded that ComEd's routes were acceptable, ComEd has no landowner's personal interests to advance. In contrast, Mr. Dauphinais testified that "I developed Adjustment #1 on behalf of intervenor William Lenschow *based on an original concept proposed by Mr. Lenschow*. I developed Adjustment #2 on behalf of intervenors Thomas Pienkowski, Kristine Pienkowski, Jerry Drexler and Kristin Drexler." Dauphinais Dir., SKP Ex. 1.0 Revised, 4:64-67 (emphasis added); *see also* Dauphinais, Tr. at 213:12 – 214:14. He explained that "Adjustment #1 *addresses the concerns of ... Lenschow*," and "Adjustment #2 *addresses the concerns of*" the Pienkowskis and the Drexlers. Dauphinais Dir., SKP Ex. 1.0 Revised, 4:77, 5:81-82. It follows that the defining feature of each of those adjustments is that they steer the route away from SKP members' land. *See* ComEd IB 24-27; Murphy Reb., ComEd Ex. 18.0, 3:55-57.

SKP also claims that ComEd's openness to considering and accepting Kenyon Bros.' proposal to use a different alignment *across Kenyon Bros.' own property* contradicts ComEd's own routing. Rather, as Mr. Deutsch pointed out, ComEd's agreement underscores its willingness to work with landowners who propose viable options consistent with the routing study. Deutsch RB at 7. The Kenyon Bros.' on-property adjustment shifts the line to no other owner's land, and the proposal contradicts none of the opportunities or sensitivities identified through ComEd's routing study and outreach process. *Cf.* Murphy Reb., ComEd Ex. 26.0 CORR, 4:77 – 5:99. The adjustment is no longer (actually, it is marginally shorter) (Murphy Sur., ComEd Ex. 26.0 CORR, 4:83 – 5:85; Dauphinais Cx. Reb., SKP Ex. 3.0, 7:140) and moves the line further from structures (Dauphinais Cx. Reb., SKP Ex. 3.0, 7:129-35). It implicates no environmentally sensitive property, and eliminates the need to bisect a farming operation (*see* Kenyon Bros. Reb. at 1). Moreover, *no party* opposed the Kenyon Bros. on-property adjustment,

before or after reopening. Even SKP and Mr. Deutsch affirmatively support it. *See* SKP IB at 10; Deutsch Reb., Deutsch Ex. 1.0, 220-22.

III. THE LINE SHOULD NOT BE DIVERTED FROM THE ROUTE COMED PROPOSED

A. The “Kenyon / Deutsch” Adjustment Is Not Viable or Desirable

The remaining portion of the Kenyon/Deutsch Adjustment¹ would relocate the Project from commercial agricultural land and existing transportation rights-of-way onto sensitive Forest Preserve property over which ComEd has no rights and no opportunity to acquire those rights. It is neither possible nor desirable.

The Deutsch segment is not viable because ComEd has no rights to use the Forest Preserve land that it traverses, and ComEd cannot secure those rights. ComEd specifically raised the prospect of using the Burlington Prairie Forest Preserve land at least twice, as early as 2013. Naumann Reopen Reb., ComEd Ex. 33.0, 2:26-28. The Forest Preserve District of Kane County (“FPDKC”) rejected those efforts and, since then, has never been willing to even negotiate concerning that refusal. *Id.*; Naumann Tr. at 449:18-20, 450:19-21; Murphy Sur., ComEd Ex. 26.0 CORR, 4:70-72. The SKP brief (SKP IBoR at 10) instead cites to testimony concerning negotiations for an easement across the *Muirhead Springs* Forest Preserve, an entirely different property located miles away. FPDKC has never expressed any interest in negotiating an easement across the *Burlington Prairie* Forest Preserve. *See, e.g.*, Naumann, Tr. 451:6-13; Meyers Reb., FPDKC Ex. 1.0, 2:14-23.

¹ What SKP refers to at the “Kenyon/Deutsch” adjustment is a combination of Kenyon Bros.’ request to realign the Project on its own property and a proposal, originally made by Mr. Deutsch, to relocate a separate segment of the Project entirely off the proposed route and onto the Burlington Forest Preserve. These two adjustments are not adjacent to one another, and the reasonableness of Kenyon Bros.’ request standing alone does nothing to mitigate the failings of the combination. For the convenience of the ALJs and the Commission, the “Deutsch” adjustment is the black and yellow dotted line on Appendix A hereto (ComEd Ex. 26.01). Kenyon Bros.’ adjustment is the black and yellow dotted line on Appendix B hereto (ComEd Ex. 26.02).

Nor is the Burlington Prairie land subject to condemnation, even if its use was ordered by the Commission. 70 ILCS 805/5e (“Property owned by a forest preserve district ... shall not be subject to eminent domain or condemnation proceedings”); Naumann Tr. at 449:20 – 450:3, 450:21-22; Murphy Sur., ComEd Ex. 26.0 CORR, 4:67-70. The Commission itself has also recognized FPDKC’s immunity from condemnation. *Commonwealth Edison Co.*, ICC Docket No. 07-0310 (Order, Oct. 8, 2008), at 12. And, as ComEd stated in its original Reply Brief, SKP (SKP IBoR at 11) cannot rely on the rescinded first opinion in *Lazazzera v. Commonwealth Edison Co.* See *Lazazzera v. Commonwealth Edison Co.*, ICC Docket No. 90-0265 (Final Order on Rehearing, Nov. 24, 1992), 1992 Ill. PUC LEXIS 440, *8-9. Pursuing unobtainable routes is neither necessary nor prudent. *Commonwealth Edison Co.*, ICC Docket No. 07-0310 (Order, Oct. 8, 2008) at 12; Naumann, Tr. 449:17 – 450:3.

SKP’s reference to ComEd’s use of railroad property – which also generally cannot be condemned – likewise misses the mark. Unlike the FPDKC, railroads are profit-making ventures, often eager to allow joint use of their rights-of-way by utilities that pay for the rights. ComEd’s ability to cross railroads says nothing about its ability to cross FPDKC land.

Finally, SKP cannot reasonably claim (SKP IBoR at 10) that using this virgin land is desirable because such a route passes fewer structures. While there may be circumstances where traversing forest preserve land is necessary or desirable, the absence of houses and buildings in a forest preserve *is the reason to avoid* such property, not a special invitation to cross it. Meyers Reb., FPDKC Ex. 1.0, 2:14-15. Indeed, SKP can point to no evidence that using the Burlington Forest Preserve is superior environmentally. When evaluated holistically, as Ms. Murphy did, the Primary Route is superior. Murphy, Tr. at 433:12-14, 434:15 – 435:7, 443:21-22.

B. The Dauphinais Adjustments Are Inferior and Should be Rejected

Dauphinais Adjustment #1 does not meet the identified goals of the routing study. As noted above, it was designed to “address the concerns of intervenor William Lenschow” (Dauphinais Dir., SKP Ex. 1.0 Revised, 14:293-98) and reduced the number of poles near his property. To avoid Mr. Lenschow’s property, Adjustment #1 also moves the Project off the railway corridor where ComEd has existing rights. *See* ComEd Ex. 5.04. Mr. Dauphinais, however, acknowledges that use of such corridors is an identified routing “opportunity” and one Mr. Dauphinais himself testifies may outweigh even proximity to residences. *See* Dauphinais Dir., SKP Ex. 1.0 Revised, 7:146-52, 8:169-78 (“[I]t may be appropriate to select an alternate route that impacts *more residences* if that route also significantly outperforms the other route in terms of minimizing the portion of its length that” lies off an existing corridor). Mr. Dauphinais also concedes that Adjustment #1 is not least-cost. *Id.* at 12:256-69. On top of which, his estimate omits the cost of additional land needed because the Adjustment does not use ComEd’s existing railroad property rights (*id.* at 12:268-69).

Dauphinais Adjustment #2 likewise steers the Project away from SKP members’ land but fares poorly on overall routing criteria. For example, it reduces the number of residences within 500 feet of the route by *one* – from four to three – but adds *seven* additional nonresidential structures. *Id.* at 16:346-50. The remaining alleged “advantages” of Adjustment #2 are *de minimis* at best. It would reduce the length of the Project by 0.17 miles (*id.* at 17:364), a sliver of the Project’s 60-mile length. Murphy Dir., ComEd Ex. 5.0, 3:61. It would require *one* less angle. Murphy Reb., ComEd Ex. 18.0, 4:84 – 5:86. In contrast, the other landowners affected by this proposed adjustment – the landowners for whose benefit the proceeding was reopened – oppose it and strongly prefer ComEd’s Primary Route. *See* Burlington Group IBoR at 1-4;

Burlington Group Pet. to Intervene at 1 (“The Petitioners object to a proposed alternative route ... known as ‘Dauphinais Adjustment 2.’”).

IV. CONCLUSION

Based on the record, as originally submitted and as supplemented on reopening, ComEd requests that the Commission issue a Certificate of Public Convenience and Necessity for the GPG Project under Section 8-406.1 of the Public Utilities Act (“PUA”) and that the Commission enter an Order under Section 8-503 of the PUA, 220 ILCS 5/8-503, authorizing and directing its construction. Route alternatives other than the Kenyon Bros. on property adjustment should be rejected.

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Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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